IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7456 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOKSINH RAMPREETSINH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7456 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 29/11/2004

ORAL JUDGEMENT

1. Heard ld. Ms. KU Mishra for the petitioner and

ld. APP Ms. HB Punani for the respondents. Today, ld. AGP Ms. Punani has tendered affidavit in reply of Mr. K.R. Kaushik, Commissioner of Police, Ahmedabad City to meet with the grounds raised by the petitioner in the present petition. I have considered the contents of the reply affidavit in light of the facts averred in the petition, as well as settled legal position.

2. By this petition under Article 226 read with Articles 21 & 22 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 05.05.2004 passed by the Commissioner of Police, Ahmedabad City in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner is branded as "dangerous person" as defined under the Act.

3. Ld. counsel Ms. Mishra has taken this Court through various grounds raised in the memo of the petition. However, she has restrained her arguments on two grounds and submitted that these two grounds would go to the root of the legality and validity of the order of detention as well as further detention as this is a case of violation of Article 22(5) of the Constitution of India. The first point raised before the Court is that when the order of detention came to be passed by the detaining authority, the detenu was already in jail for the solitary offence registered against him as mentioned in the grounds of detention. According to her, the orders of detention passed against three or four detenus have been revoked by the State Government and when the petitioner had even not filed any application for bail till the date on which he came to be detained under PASA vide order under challenge, there was no reason for the detaining authority to pass the order of detention. Therefore, it should be held that there is an element of arbitrariness and improper exercise of powers vested with the authority. The second point placed before the Court is that the authority namely Secretary, Home Affairs (Spl.Cell.III) who was supposed to deal with the representation made by the petitioner, has not meticulously dealt with the representation. According to the petitioner, he had represented his cause by a written representation dated 17.06.2004 and even as per the say of the State, it was decided by the authority on 21.06.2004. The submission advanced by ld.AGP Ms.Punani even if is accepted for the sake of argument that representation was considered expeditiously because it has reached to the authority on 18.06.2004 which was processed on 19.06.2004 and 20th being Sunday, the formal

decision was taken by the authority on 21.06.2004, and therefore, there is no delay in considering the representation, even then there is a delay in communicating the said decision to the detenu and on that ground, order of detention requires to be quashed and set aside. It is submitted by ld. counsel Ms. Mishra that the order of rejection was not communicated to the detenu expeditiously. Communication of rejection was received by the detenu on 26.06.2004. So, failure in communicating the decision when has remained unexplained, the order of detention can not sustain because the same violates the rights of the detenu conferred on the detenu under Articles 21 & 22(5) of the Constitution of India.

4. Having considered the totality emerging from the record and in absence of any documentary evidence to show that intimation of rejection of representation was dispatched immediately on 22.06.2004, the order of detention shall have to be turned down because it can not sustain.

5. Ms. Mishra has placed reliance for the purpose on the decision of the Apex Court in the case of Harish Pahwa v/s State of U.P. and others, AIR 1981 SC 1126. It has been observed by the Apex Court as under:-

> ".... We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case, we have no option but to declare the detention unconstitutional...."

6. Ld. counsel Ms. Mishra has also placed reliance on the decision in the case of Rajmal v/s State of Tamil

Nadu, AIR 1999 SC 684, where the matter was relating to the case of detention under TN Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offences and Slum Grabbers Act,1982. In the said case, the Apex Court has found and observed that "unexplained delay of 5 days in considering and disposing of the representation of the detenu would be fatal." In the present case, 5 days' delay is caused in communicating the decision. Over and above this decision, ld. counsel Ms. Mishra has placed reliance on the decision of this Court in the case of Naranbhai Dhanabhai Bharwad v/s State of Gujarat decided on 19.06.2001 (Coram: Hon'ble Mr. Justice H.K. Rathod) in Spl.C.A. No.12634/2000. Ratio of this decision also would help the present petitioner and this Court, while placing reliance on the decision of this Court in Spl.C.A. No. 9664/1999 (Coram: Hon'ble Mr.Justice A.L. Dave) decided on 16.03.2000, has held that "undisputedly, there is no explanation given by the respondent as to what happened on 1st Decembelr,2000 whether representation has been attended by the Addl. Chief Secretary or not and, therefore, in light of this fact, non-explanation for one day's delay in considering the representation submitted by the petitioner has adversely affected the legal right of the petitioner to make an effective representation to the concerned authority and, therefore, according to my opinion, the order of detention is required to be quashed and set aside."

7. Here in the present case, there is un-explained delay of 5 days in communicating the decision on the representation which will go to the root of the validity of the order of detention and hence, the order of detention requires to be quashed and set aside.

8. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 05.05.2004 passed by the Commissioner of Police, Ahmedabad City is is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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